

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14067, of John F. Dobricky, III and Patrick D. Ruta, Jr., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the rear yard requirements (Sub-section 3304.1) to construct a rear deck addition in an R-4 District at premises 2045 Rosemount Avenue, N.W., (Square 2618, Lot 130).

HEARING DATE: November 16, 1983  
DECISION DATE: January 11, 1984

FINDINGS OF FACT:

1. The subject site is located on the east side of Rosemount Avenue approximately thirty feet from the point where Rosemount Avenue dead ends to the north at Rock Creek Park. The site is known as premises 2045 Rosemount Avenue, N.W. The site is in an R-4 District.

2. The subject site has an area of 1,381 square feet. It is improved with a two story brick, semi-detached dwelling which fronts on an alley on both its north and east sides. The site has approximately twenty feet of street frontage.

3. There is a wooden deck constructed in the rear yard of the subject dwelling. This deck extends for the width of the dwelling and projects to the rear of the house for a distance of 8.17 feet. The existing deck occupies nearly the entire rear yard.

4. The subject property abuts a row dwelling to the south. This property, 2043 Rosemount Avenue, has a similarly constructed rear deck which does not project as far into the rear yard as the subject deck. North of the site, there is a ten foot wide public alley followed by a semi-detached dwelling and Rock Creek Park. East of the site, there is a twenty foot wide public alley followed by the rear yards of row dwellings which front on Pierce Mill Road. The majority of these dwellings have rear decks extending into the rear yards. These properties for the most part have deeper rear yards than the other lots in the square. The House of Mercy Hospital and grounds is located to the southwest of the site across Rosemount Avenue. All of the property located within 1,800 feet of the site, excluding the federal park land, is zoned R-4.

5. The applicants purchased the subject site in January, 1981. Prior to the spring of 1982, they had the subject deck constructed. The applicants secured a contractor who had constructed other rear decks in the neighborhood. They left all construction details to the contractor. No building permit was ever obtained for the deck.

6. The applicants, in attempting to obtain a building permit after the fact, had plans drawn to correspond to the deck as it had been constructed. The Zoning Administrator, upon review of said plans, advised the applicants that the plans would require BZA approval under Paragraph 8207.11 since the plans and the deck were in violation of the rear yard requirements of Sub-section 3304.1 of the Zoning Regulations.

7. Sub-section 3304.1 of the Zoning Regulations provides that a building in an R-4 District must provide a rear yard at least twenty feet in depth. The applicants are providing 1.3 feet, thus requiring a variance of 18.7 feet or ninety-four percent.

8. The applicants now seek a variance under Paragraph 8207.11 of the Zoning Regulations to allow the continuation of the existing deck. Said paragraph provides that the BZA may grant a variance where by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation would result in peculiar and exceptional practical difficulties upon the owner of such property and provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map.

9. The applicants, in support of the requested variance, asserted that the subject site had the shortest depth of all rear yards in the subject square. Prior to the construction of the deck, the rear yard measured 9.74 feet deep. The subject site was developed prior to May 12, 1958, the effective date of the current Zoning Regulations.

10. The applicants further asserted that the subject lot is exceptionally shaped since the northwest corner is cut off at an angle.

11. The lowest level of the house, which is slightly above the alley level, is the basement of the house. The basement level at the rear of the house contains a garage. The deck, which is one story above the alley level at the

first floor, provides outdoor recreation space for the applicants.

12. The applicants further argued that the deck causes no detriment to the public good and does not impair the intent, purpose or integrity of the zone plan. The applicants referenced the many letters on record in favor of the application.

13. Other than the arguments cited, no further evidence of a practical difficulty was submitted to the record.

14. There were many letters of record in favor of the application. Eleven letters were form letters prepared by the applicants and signed by various property owners in the area. The grounds for approval were that the existing deck did not cause inconvenience to the neighborhood and, in fact, visually enhanced the appearance of the alley. The deck also provided some usable private backyard space for a lot which would otherwise have none, since the backyard was paved over as a driveway providing access to parking for the subject structure.

15. Other letters of support further indicated that the subject deck was comparable to other decks along the alley. Two owners suggested that rather than discouraging such neighborhood improvements through excessive and capriciously enforced regulations, the District of Columbia should be encouraging them. Two additional owners commented that they were disturbed that the city, which paid no attention to their problems with rodents and trash and abandoned automobiles, should suddenly discover that an improvement to an existing structure warranted a hearing. They were distressed that efforts to improve and rehabilitate houses should be subject to harassment.

16. Some of the letters stated that the letter from the Zoning Secretariat advising of the hearing did not make clear on what basis the hearing was being held. The letters noted that it would be helpful to the neighborhood in similar circumstances in the future if the notice could be re-written to more specifically outline exactly what the problem in the case is supposed to be.

17. Some of the neighbors indicated that they had been unable to discover any legitimate problem at all. In their view, the existing deck is in tune with other neighborhood rehabilitation efforts, it obstructs nothing and it is neither garish nor dangerous. One letter stated that it is a questionable use of tax dollars to hold "hearings" on existing structures which present no danger and no inconvenience.

18. The Board finds that many of the comments cited in

the aforementioned letters are not relevant to the decision as to whether to grant a variance. The Board is compelled, however, to address some of the comments recited. The Board notes that:

- A. None of the letters addressed themselves to the underlying zoning issues necessary for the granting of a variance; i.e., whether there is an exceptional or extraordinary situation or condition of the property that, given the strict application of the Zoning Regulations, causes a practical difficulty for the owners.
- B. It is disconcerting that no letter expressed any concern that the deck was illegally constructed. The fact that no permit was ever applied for to construct the deck appears to be of no importance to the other owners of property. The whole issue of illegality was never raised.
- C. The records of the Zoning Secretariat are public records available to all to examine. Instead of criticizing the announcement sent to them, which plainly states the need for the variance, it would have been more useful for the neighbors to telephone the Zoning Secretariat or visit its office and study the record before reaching subjective conclusions.
- D. The Board reminds the correspondents that the Zoning Regulations are enforceable against all citizens. Building code requirements are equally enforceable against all citizens. Enforcement of neither code is selective or capricious, as the respondents allege. The District of Columbia Government is carrying out its obligation to enforce its rules and regulations. This is the purpose of the hearing. The Government is not an adversary of the applicants. The Board does not take lightly that the neighboring property owners appear to challenge the District's right and authority to enforce its own regulations.

19. Advisory Neighborhood Commission 1E made no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the applicants are seeking an area variance, the granting of which requires proof through substantial evidence of a practical difficulty upon the owner of the property arising out of some extraordinary or exceptional situation or condition of the property. The Board must further find that the relief can be granted

without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan. The Board concludes that the applicants have not met the burden of proof.


There is no practical difficulty inherent in the property which would sustain the area variance. While the lot is shallow and irregularly shaped, as to the rear northeast corner these characteristics are not sufficient of themselves to support so extensive a variance. The lot is too small to sustain the density of the amenities to which it is being put, such as parking facilities and deck. The applicants seek the convenience of additional outdoor recreational space at the first floor level. A convenience is no grounds to sustain an area variance. The applicants constructed a deck that leaves a rear yard measuring 1.3 feet, whereas a twenty foot rear yard is required under the Zoning Regulations. The Board further concludes that a rear yard depth of 1.3 feet is a substantial impairment of the intent and purpose of the zone plan for an R-4 District.

The Board is of the opinion that the applicants acted less than diligently in the matter of ensuring that proper permits were obtained for the construction of the deck. If the applicants had acted more responsibly, they would have been aware that no permit had been issued. If permits had been requested before construction, the applicants would have known of the extent of the variance that was required under the Zoning Regulations. The Board is of the opinion that other than the immediate temporary financial condition resulting from the demolition required, the applicants would suffer no practical difficulty if the Zoning Regulations were strictly applied and the deck was dismantled. The applicants can seek redress of that condition against the contractor in other forums. Accordingly, it is hereby ORDERED that the application is DENIED.

VOTE: 3-0 (Walter B. Lewis, Douglas J. Patton and Carrie L. Thornhill to deny; William F. McIntosh and Charles R. Norris, not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FEB 28 1984

FINAL DATE OF ORDER: \_\_\_\_\_

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14067order/LINDA